

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Denali Pizzeria & Sports Bar, LLC)
d/b/a Vain)
Applicant (Late Hour))
for the premises located at)
2354 North Clybourn Avenue) Case No. 08 LA 65
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Norma I. Reyes, Commissioner)
)

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER SCHNORF

The application for a Late Hour liquor license privilege at this location was denied for these two bases:

- a. Failure to obtain the necessary petitions from a majority of registered voters within 500 feet of the applicant's premises as required by MCC 4-60-130(e). It was determined 105 signatures were needed and the City recognized 76 valid signatures.
- b. Failure to file an exterior safety plan with the application for the late hour privilege as required by MCC 4-60-130(f).

The applicant filed a timely Notice of Appeal with this Commission and the matter proceeded to a de novo hearing on April 29, 2009. On April 23, 2009, the matter was not heard since only Chairman Fleming was in attendance. At the April 29, 2009, hearing it was agreed that the matter could proceed to hearing without a quorum of the Commissioners but that a decision would need to be made by a quorum of the Commissioners.

Section 4-60-130 (e) of the Municipal Code of Chicago requires in relevant part that:

Within 60 days before the filing of an application for a late hour license the applicant shall obtain and file with the Department of Business Affairs and Consumer Protection the written consent of a majority of the legal voters registered within the affected area. Such measurement shall be made from the boundaries of the premises as described on the application for which the late hour license is sought, to a radius of 500 feet away.

Section 4-60-130(f) states "Every application for a late hour privilege must be accompanied by an exterior safety plan meeting the requirements of this subsection." Paragraph 3 of this section states "The failure to submit an adequate exterior safety plan as required by subsection (f) shall be grounds to deny an application for a late hour privilege."

Prior to the start of evidence counsel for the City and the applicant agreed that 105 valid signatures were needed pursuant to the requirements of the ordinance. It was agreed that City's Exhibit 1, which consists of the documents reviewed by Gregory Steadman was allowed in evidence to prove the City proceeded in a proper manner but not as substantive evidence. City's Exhibit 2, which is the denial letter of September 4, 2008, was allowed in evidence without objection.

Joy Adelizzi, is the Deputy Director of the Department of Business Affairs and Consumer Protection and prior to April of 2009 was involved in the process of approving and denying liquor licenses. Denali Pizzeria and Sports Bar filed an application for a Late Hour liquor license in 2008. Davina Jackson was the person who received and processed that

application. Ms. Jackson took a leave and voluntary severance package in August of 2008. Ms. Adelizzi was Jackson's supervisor. Ms. Adelizzi explained an applicant for a late hour privilege is required to obtain written consent by petition from residents in an area within 500 feet of the business location. The 500 radius is determined electronically from an IRIS database through a feed from the Chicago Board of Elections. The list of registered voters is provided to the applicant. The applicant then needs to collect the signatures.

City's Exhibit 3B was allowed in evidence as the module or list of voters given to the applicant and used by Davina Jackson in this case. City's Exhibit 4 consisting of an A and B list was allowed in evidence without objection. City's Exhibit 5 which was described as Davina Jackson's processing checklist and explanation of color code was allowed in evidence without objection.

Ms. Adelizzi explained that the color code used by Davina Jackson was:

1. Pink means an ineligible signature
2. Orange means voters not on the notification module (not on the DBA voter list that was issued to client)
3. Green is an okay legible signature
4. Yellow is a voter out of the range
5. Red is a name removed from the list after the applicant provided an affidavit that the voter had moved.

She also explained specifically that if a person's name appeared on the module but the address did not match that name, it would be marked orange and not counted. After the petitions were

submitted the business consultant was in charge with reviewing the signatures and processing the application.

Ms. Adelizzi identified City Exhibits 6 and 7, in evidence, as synopses of the documents reviewed by Davina Jackson. They contain essentially the same information but City's Exhibit 7 is a formal matrix of the processing effort. They reflect the total number of names presented to the applicant in the module was 322. Fifteen names were deducted because they were listed twice, leaving a total of 307. The applicant provided affidavits from 99 people that they no longer lived in the area and the 307 number was reduce to 208. One-half of that number plus one or 105 was the required number of valid signatures. Ms. Jackson's review of the signatures led her to determine there were 76 valid signatures. Ms. Jackson disqualified 111 signatures. If one deducts 111 invalid signatures from 203, one does not end up with 76 valid signatures but with 92 valid signatures. Ms. Adelizzi speculated that 15 duplicate signatures listed on City Exhibits 6 and 7 were not added in on these sheets. 203 signatures minus 111 and then minus 15 would be about 76. The witness also admitted there might be a slight error in the number. The bottom line is that 105 signatures were needed.

Ms. Adelizzi testified that after her review of signatures on the petition she discovered other issues with some of the signatures. It appeared to the witness that a number of the signatures to have the same handwriting. She also found that all the signatures on the two pages of the petition marked B starting with a Marsha Bretz and ending with a Linda Schlapinski listed the address of 2333 N. Ashland. These people are not listed as living at 2333 N. Ashland in the module provided to the applicant.

The entire petition was also reviewed for inconsistencies after Ms. Adelizzi noticed that several signatures, in her opinion, had the same handwriting. Signatures on the petitions were compared to voter registration and signature cards from the Board of Elections. City's Exhibit 8, in evidence over objection, are documents provided by the City of Chicago Board of Elections in response to a Subpoena Duces Tecum for voter records for people listed in Exhibit 1. Exhibit 1 lists 33 people and records were produced for all but five people at the address shown. These five people were: Debra Miller at 2333 N. Ashland, Margarita Cedillo, Linda Schlapinski and Juanita Hare at 2303 N. Clybourn and Maria Lauren at an unknown address. No records were found for Dorothy Hunter or Ana Santiago but records were found for Dorothy Hunker and Andre Santiago at 2303 N. Clybourn.

Ms. Adelizzi then testified as to her opinion as to a comparison of the signatures of voters on the petition and on the Board of Election documents. It was her opinion that none of the signatures on the petition marked B starting with Marsha Bretz on page 1 and ending with Linda Schlapinski matched the records of the Chicago Board of Elections. She specifically pointed out the records from the Chicago Board of Elections as Margaret Carrasquillo contained an "x" and the name on the petition was spelled Marget and had a signature. She also specifically pointed out that there is a signature on that petition in the name of Maria Elizabeth Campos and the name on the voter election board card is Elizabet Maria Campos. This petition was circulated a Bel Haido who had an ownership interest in the applicant corporation while he was circulating the petition. The witness pointed out other petitions circulated by Mr. Haido and pointed out similar handwriting. Those signatures were not compared with Board of Election records. Ms. Adelizzi

opined some of the signatures initially counted as valid were comprised and should not have been counted.

On a separate basis for denial of the license Ms. Adelizzi testified that at the time of the denial no late hour exterior safety plan had been submitted. Subsequently, such a plan was filed and had not been approved on the date of her testimony.

In cross-examination, Ms. Adelizzi acknowledged no formal training on the genuineness of signatures but repeated to her the naked eye shows those signatures were fraudulent. With reference to Ms. Jackson's worksheet, she reviewed these signatures as being illegible but she did not do a binder check for the genuineness of signatures. While Ms. Jackson was not present to testify, Ms. Adelizzi would have color coded the petitions. The witness reviewed City's Exhibit 7, in evidence, which is the tally sheet prepared by Ms. Jackson. It states 76 valid signatures but that calculation is wrong since you reach 92 valid signatures if you subtract 111 disqualified from a total of 203 signatures submitted. While she can speculate why 15 duplicate voters were not taken into consideration she did not prepare the document. This tally sheet does not list signatures that were fraudulent. She could not give an accurate count of the number of valid and invalid signatures.

On redirect Ms. Adelizzi testified that after counting the good signatures she came up with a total of 81 or 85.

Michael Yates testified he is a former employee of Chicago Board of Elections and now works as an election consultant. With reference to City's Exhibit 5 the color orange indicates voters not on the notification module (not on the DBA voter list that was issued to the client). He discovered inaccuracies in his review of signatures marked as orange. He identified 16 signatures as being removed for not being on the module which were on the module. He calculated 92 valid signatures from the number on City's Exhibit 7 and 16 signatures improperly stricken as not being on the module. Mr. Yates did admit some of these names had different addresses than on the module but felt in his opinion this was not the type of mistake that would justify removal of a name from the petition. He further opined there are 108 valid signatures which is over the 105 required signatures.

In cross Mr. Yates admitted he had not seen any affidavits or statements from these people that all live at 2333 N. Ashland. He felt that it might have been an error at the Board of Elections that listed a voter as Phillip Wyatt in the module and is listed as Phillip Watt on the petition. He did not review the actual Board of Election records but it would not surprise him if the records reflected Wyatt. He did not count the number of valid or green noted signatures on the petition but relied on the City's tally sheets, Exhibits 6 and 7.

Since this is an appeal from a denial of an application of a liquor license the matter before this Commission is a de novo hearing as to the propriety of this denial. As such the issues are whether the City has established the propriety of this denial by a preponderance of the evidence at the de novo hearing. The matters relied on by the Local Liquor Control Commission

which are in evidence in City's Exhibit 1 were not allowed as substantive evidence. Only evidence presented at the hearing can be considered by this Commission in rendering its decision.

This case differs from an appeal of a revocation or suspension of a liquor license after a hearing at the Local Liquor Control Commission. In that situation no additional evidence can be presented at this Commission and the decision must be made on a review of the record at the Local Liquor Control Commission. This discussion is pertinent since one of the applicant's arguments seems to be that it was improper for the City to present evidence as to fraudulent signatures at this hearing since the original denial did not consider the issue of fraudulent signatures. This Commissioner feels such an argument is not valid since the denial letter adequately advised the applicant that one of the reasons for the denial was failure to obtain 105 signatures required to meet the requirements of the Municipal Code. While the explanation in the denial letter did not address the issue of fraudulent signatures, the applicant had due notice of the City's position that it recognized 76 valid signatures. A review of the transcript does not reflect that counsel for the applicant was taken by surprise by this line of questioning and does not reflect a request for a continuance to prepare for a new hearing. The record in fact, shows counsel for the applicant was able to vigorously cross-examine Ms. Adelizzi on that portion of her testimony.

Both parties agree that 105 is the number of valid signatures needed. For purposes of this decision we start with 92 valid signatures. That number is derived from City's Exhibit 7 which

disqualified 111 of the 203 signatures. There was no adequate explanation of how Davina Jackson came to a total of 76 valid signatures. Even if you add 15 duplicate signatures to the list of disqualified signatures you have 87 valid signatures. Ms. Adelizzi testified that after she did a count of good signatures of about 81 or 85 valid signatures.

The gist of this case comes down to whether it was proper for the City to not count signatures that were disqualified either because the address of the voter on the petition does not match the address in the module or were fraudulent signatures. If the 16 signatures are counted there would be more than the 105 signatures needed.

With respect to these signatures four listed an address of 2333 N. Ashland as the petitioner's address but had an address of 2340 N. Bosworth in the module. One of the petitioner's did not list an address on the petition but had an address of 2303 N. Clybourn in the module. The remaining twelve signatures listed an address of 2333 N. Ashland on the petition but were listed in the module as 2303 N. Clybourn. It should be noted that the addresses of 2333 N. Ashland, 2303 N. Clybourn and 2340 N. Bosworth all appear to be within 500 feet of the premises. Voters from these addresses are listed in the module.

The argument made by counsel for the licensee is that since these 16 voters were listed in the module the fact that the address on the petition is different from the address in the module is not relevant.

Counsel for the applicant attempted to argue that the addresses of 2333 N. Ashland and 2303 N. Clybourn are two addresses from one building and thus are one and the same. It should be noted no substantive evidence was introduced on that issue and the applicant's own expert witness testified he never went to the building and has no personal knowledge of the addresses. Counsel for the applicant never addressed the issue of why four of the petitioner's had an address of 2340 N. Bosworth in the module and an address of 2333 N. Ashland on the petition. No explanation was given as to why one of the signatures had no address listed.

On the basis of the discrepancy between the signature on the petition and those on the module the City has proved by a preponderance of the evidence the propriety of the decision of the Local Liquor Control Commission that the applicant failed to obtain the necessary 105 signatures. Applicant argues discrepancy between the addresses is a minor error that should not result in disqualifying these signatures. They refer to the case of Ryan v. Lindek, 159 Ill.App.3d 10, 512 N.E.2d 1, (1987) in support of this position. In that case the candidate's address on his nominating petitions had the wrong address of the candidate. The last digit of the address was mistyped. At the hearing the candidate presented no affidavit that the wrong address appeared as a result of a typographical error. In that case the court held that one mistyped digit on a candidate's nomination papers is not sufficient to have his name removed from the ballot. In this case sixteen names have either a different address or no address listed on the petitions. No affidavits were provided from the signers on the petition explaining the difference in the address or the lack of an address.

The City has also presented evidence that certain signatures should be invalid because they were fraudulent signatures. The documents in evidence as City's Exhibit 8 which are the records of the Board of Election. They have been compared with the signatures on the petition. While a handwriting expert might be needed if the issue was whether a specific person signed a specific signature, such testimony is not needed for this type of determination. Based on the comparison, the City has proven by a preponderance of the evidence the following signatures were fraudulent:

- a. Marsha Brets
- b. Melinda Cajias
- c. Maria Elizabeth Campos (her name is Elizabet Maria Campos)
- d. Margret Carrasquillo (she signs with an "x" and her name is Margaret)
- e. Diana Deleon
- f. Michael Estremera
- g. Margarita Garcia
- h. Barbara Guieb
- i. Ariel Menez
- j. C.C. Miller (initials on record is J.C.)
- k. Vladimar Rabinovich
- l. Gale Stamps
- m. Melissa Anderson
- n. Demitrius Ewing (first name is Demetrius in records)

- o. Timothy Rogers
- p. Eugene Santiago
- q. Phillip Watt (name on records is Phillip Wyatt)
- r. Daniel Andrusz
- s. Nicolas Breban
- t. Joan Duna
- u. John Hartney
- v. Dorothy Hunter (name in records is Dorothy Hunker)
- w. Michelle Oquendo
- x. Miguel Reyes
- y. Ana Santiago (records are for Andre Santana)

Of those 25 signatures found to be fraudulent it appears 12 of those signatures were improperly counted as good signatures. On this basis alone that would reduce the number of valid from 92 to 80, far below the 105 valid signatures needed. This finding also establishes the propriety of the decision of the Local Liquor Control Commission that 105 signatures were not presented.

The denial of the license was also based on the failure of the applicant to file an exterior safety plan with the application for a Late Hour privilege. While such a plan was filed at the time of the hearing no plan was filed with the application. The Local Liquor Control Commission's decision to deny this application on that ground was also proper.

The decision of the Local Liquor Control Commission is affirmed.

THEREFORE, IT IS HEREBY ORDERED That the said order or action of the Local Liquor Control Commissioner of the City of Chicago be and the same hereby is AFFIRMED.

Pursuant to Section 154 of the Illinois Liquor Control Act, a petition for rehearing may be filed with this Commission within TWENTY (20) days after service of this order. The date of the mailing of this order is deemed to be the date of service. If any party wishes to pursue an administrative review action in the Circuit Court, the petition for rehearing must be filed with this Commission within TWENTY (20) days after service of this order as such petition is a jurisdictional prerequisite to the administrative review.

Dated: July 16, 2009

Dennis M. Fleming
Chairman

Stephen B. Schnorf
Member

